

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 116 of 2000

to

SPECIAL CIVIL APPLICATION No 134 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL DINESHKUMAR SOMABHAI

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner
MR. S.N. SHELAT, Addl. Advocate General with
MR. V.B. GHARANIA, AGP, for Respondent No. 1
MR PK JANI for Respondent No. 4

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 20/01/2000

ORAL JUDGEMENT

All these petitions involve common grounds and have been argued together. The respondents have appeared as caveators.

2. The grievance of the petitioners is that the authorised officer has made an order on 4.1.2000 rejecting the objections which were raised by the petitioners against inclusion of the names of the representatives of the respondent societies in the voters' list prepared for the purpose of Section 11 of the Gujarat Agricultural Produce Markets Act, 1963 read with Rules 7 of the Rules framed thereunder in respect of agriculturists' constituency. It has been contended that under Section 11(1)(i) eight agriculturists are required to be elected by members of the Managing Committee of Co-operative Societies (other than Co-operative Marketing Societies) dispensing agricultural credit in the market area. According to the petitioners, the words "dispensing agricultural credit" indicate that the societies should be actually dispensing agricultural credit in the market area. It has been contended that in this context guidelines have been issued which indicate that the authorised officer has to apply his mind to find out as to whether the societies were actually dispensing credit over a period of time. As per the Circular dated 25.9.1997 the credit transactions entered into by such societies were to be examined in respect of a period of three years immediately preceding such consideration. It was contended that the escalation in the number of such societies which have come to be included in the provisional voters' list shows that they are not genuine credit societies and have been created only with a view to inflate the voters' list so that they can support the interested party. It was pointed out that in the voters' list of 1999 the number of voters increased by more than 450 while in the past years the increase was much less. Assailing the impugned order dated 4.1.2000 it was contended on behalf of the petitioners that though the objections were scheduled to be heard on 28.12.1999 on which date the petitioners did submit their objections, the respondent credit societies had sought time upto 30.12.1999 and their explanations given after the date fixed for hearing of the objections were accepted and the orders were made on 4.1.2000 without the petitioners even knowing about the explanations which were subsequently given by the respondent - societies. The learned Senior counsel made it clear that he was not raising any point which was already covered by the decision of the Division Bench rendered on 30.12.1999 in Letters Patent Appeal No. 1735 of 1999 but his grievance was mainly against the

non-application of mind by the authorised officer to the aspect as to whether these credit societies were really dispensing agricultural credit in the market area within the meaning of Section 11(1) of the Act. Learned Senior counsel, aware of the approach of the courts leaning against interference, once election process has started, placed reliance on the decision of a Division Bench of this court in M.D. Co-op. P.S. Union Vs. D.B.U.R. & V.K.S. Mandali reported in 1998(1) GLH 170 pointing out therefrom that in appropriate cases the court can interfere even at this stage and should not refuse to exercise its jurisdiction under Article 226 of the Constitution of India on the ground of existence of an alternative remedy. He referred to the observation made in paragraph 12 of the judgement which narrated reasons on the basis of which the court ultimately interfered against illegal deletion of the names of the petitioners of that matter from the final voters' list. The court found that alternative remedy suggested in the case before it was illusory and ambiguous. Referring to the provisions of Rule 28 which provides for machinery for determination of validity of election, the court held that it was clear therefrom that a person qualified to vote alone could maintain petition under Rule 28 and a person qualified to vote was a person whose name is entered in the voters' list. Therefore, a person whose name is not entered in the electoral roll is not a person qualified to vote and when the name of a person was deleted by the authorised officer from the provisional voters' list he would no longer be a qualified voter and would therefore not be in a position to file petition under Rule 28. It is clear from this decision that it deals with a situation where name of a person is deleted from the voter's list as a result of which he cannot maintain any petition under Rule 28 of the Rules for getting validity of the election determined. In the present cluster of cases there is no case of any deletion of name from the provisional voters' list. The objections are against inclusion of the names of the respondent - societies on the ground that they are not dispensing agricultural credit in the market area. Therefore, this decision will have no application to the present case.

3. A question as to whether the court can interfere at this stage came up even earlier for consideration of a Division Bench of this court in PATAN F&S. S.M. LTD. VS. PALI SHAKBHAJI S.M. LTD. reported in 1986 GLH 430 in the context of voters' list under these very rules and Rule 28 thereof providing machinery for determination of validity of election. The Division Bench held that

conspectus of the Rules shows that the entire process of election under the scheme of election of the Market Committee in the Rules is so integrated and revolves round the date of election that it is difficult to agree with the view canvassed on behalf of the petitioners seeking modification of the electoral rolls that the preparation of the electoral roll is not a part of the election and the election commences only with the declaration of the programme of election. It was held that the preparation of electoral roll was an integral part of the process of election and therefore the question as to whether the roll should be modified at the instance of persons claiming to be voters or at the instance of persons objecting to the inclusion of the names of some persons in the voters' list is a matter relating to election, and the High Court should not in view of special remedy provided for the purpose, exercise its jurisdiction since there is a provisional finality in the matters pertaining to various stages of election and having regard to the recognised principle that election should be concluded as early as possible according to time schedule and all controversial matters as well as disputes arising out of the election including the right to vote or stand as a candidate, should be postponed till after the elections are over so as to avoid impediment or hindrance in the election process.

4. Similar question came up for consideration also before another Division Bench in MEHSANA DISTRICT CO-OPERATIVE SALES AND PURCHASE UNION LTD. VS. STATE OF GUJARAT reported in 29(2) GLR 1060. The court considered the question whether the High Court in exercise of jurisdiction under Article 226 of the Constitution would be justified in arresting election programme which had been set in motion by issuance of an order under Rules 4 and 10 of the Rules on the plea that certain names were finalised by the authorised officer under Rule 8 in view of special forum and remedy provided by Rule 28 of the Rules. The court held that according to Rule 28 if the validity of election was questioned after the declaration of the result it had to be decided by the forum created thereunder which had the power to confirm or amend the declared result or set aside the election. It was held that preparation of the list of voters was a stage in the direction of holding of elections so far as the scheme of the Rule is concerned. It was found that it did not consider such case as a case which would justify invoking the extraordinary jurisdiction of the Court.

5. In L.P.A. No. 1735 of 1999 decided by a Division Bench of this Court on 30.12.1999 the same

election process was under consideration in slightly a different context in respect of these credit societies. It was noted in paragraph 7 of the judgement that the election process had started. Provision list of voters was published on 18.12.1999. Thereafter, it was to be republished inviting objections on 4.1.2000 and the final list was to be prepared by 15.1.2000. It was then observed that preparation of voters' list was a part or step towards election process and grievance regarding validity of the voters' list can be made under Section 28 of the Rules which provided for a machinery for determination of election dispute after the results were declared. It was observed that this would not be an extraordinary or exceptional case which can justify interference under Article 226 of the Constitution. The learned counsel however submitted that until the date of that decision there was no order made by the authorised officer and now there is an order dated 4.1.2000 which is being challenged. This would however, hardly make any difference in principle, because, the order has a bearing on the same question as to preparation of voters' list, the validity whereof can be questioned at a later stage after the declaration of election in accordance with the provisions of Rule 28 of the Rules. Even the question as to whether guidelines issued by the Government in their Circular dated 25.9.1997 cannot be concluded at this stage and, if it is raised, it can be examined at appropriate stage after the results are declared. The order dated 4.1.2000 made by the authorised officer is issued in exercise of his jurisdiction. In this order he has given a finding in favour of the respondent societies that they are eligible to be voters. In the order it is stated that the findings are reached on the basis of the material which was produced before the authorised officer. This court cannot sit in appeal over such decisions because, the question whether the credit society was actually dispensing credit or not would be a question of fact which cannot ordinarily be gone into by the High Court in its writ jurisdiction. Some useful suggestions were made during the course of hearing by the learned Senior Counsel for the petitioners as also by the learned Counsel for the respondent Co-operative Societies to the effect that appropriate adjudicatory mechanism on the lines of Section 14 of the Gujarat Municipalities Act, 1963 should be devised to create confidence in the adjudicatory process. That would ofcourse be for the legislature to ponder over.

6. In this view of the matter, there is absolutely no ground for interfering with the impugned orders and

all these petitions are summarily rejected without prejudice to the right of the petitioners to challenge the election results in accordance with law.

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